

**APPENDIX E**  
**CONTINUING DISCLOSURE CERTIFICATE**

This CONTINUING DISCLOSURE CERTIFICATE (the "Disclosure Certificate") is executed and delivered by the CITY OF SAN DIEGO (the "City") in connection with the execution and delivery by the City of its Refunding Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program, Series 1991) Series 1996B, in an aggregate principal amount of \$11,720,000 (the "Certificates"). The Certificates are being executed and delivered pursuant to a Trust Agreement, dated as of August 1, 1996, by and among the City, the San Diego Facilities and Equipment Leasing Corporation and BNY Western Trust Company (the "Trustee") (the "Trust Agreement"). The City covenants as follows:

**SECTION 1. Purpose of the Disclosure Certificate.** This Disclosure Certificate is being executed and delivered by the City for the benefit of the Holders and Beneficial Owners of the Certificates and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

**SECTION 2. Definitions.** The definitions set forth in the Trust Agreement apply to any capitalized term used in this Disclosure Certificate, unless such terms are otherwise defined in this Section 2 below:

"Annual Report" shall mean any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Beneficial Owner" shall mean any person which (a) has or shares the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Certificates (including persons holding Certificates through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Certificates for federal income tax purposes.

"Disclosure Representative" shall mean the City Manager of the City, or their designee, or such other officer or employee as the City shall designate in writing from time to time.

"Dissemination Agent" shall mean the City, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the City.

"Holders" shall mean either the registered owners of the Certificates, or, if the Certificates are registered in the name of The Depository Trust Company or another recognized depository, any applicable participant in its depository system.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

"National Repository" shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule. The National Repositories currently approved by the Securities and Exchange Commission are set forth in Exhibit B to this Disclosure Certificate.

"Participating Underwriter" shall mean any of the original underwriters of the Certificates required to comply with the Rule in connection with the offering of the Certificates.

"Repository" shall mean each National Repository and each State Repository.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State" shall mean the State of California.

"State Repository" shall mean any public or private repository or entity designated by the State as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Certificate, there is no State Repository.

"Tax Owner" means the owner of any Certificates for Federal income tax purposes. The assertion of any tax ownership of a Certificates must be filed with full documentary support, as part of a written request pursuant to Section 10 hereof.

### SECTION 3. Provision of Annual Reports.

(a) The City shall, not later than 285 days after the end of the City's fiscal year (presently April 11 of the calendar year following the end of the City's fiscal year), commencing with the report for the end of the 1996-97 Fiscal Year, prepare an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate and shall, or shall cause the Dissemination Agent, if applicable, to provide such Annual Report to each Repository not later than 285 days after the end of the City's fiscal year. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the date required above for the filing of the Annual Report if not available by that date. If the City's fiscal year changes, the City shall give notice of such change in the same manner as for a Listed Event under Section 5(c).

(b) Not later than fifteen (15) Business Days prior to the date specified in subsection (a) for providing the Annual Report to Repositories, the City shall provide the Annual Report to the Dissemination Agent (if other than the City).

(c) If the City is unable to provide the Repositories an Annual Report as required in subsection (a), the City shall send a notice to each Repository in substantially the form attached as Exhibit A hereto.

(d) The Dissemination Agent shall:

(i) determine each year prior to the date for providing the Annual Report the name and address of each National Repository and the State Repository, if any; and (if the Dissemination Agent is other than the City)

(ii) file a report with the City and certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, stating the date it was provided and listing all the Repositories to which it was provided.

SECTION 4. Content of Annual Reports. The City's Annual Report shall be in format suitable for filing with each Repository and shall contain or incorporate by reference (i) the City's audited financial statements for the prior fiscal year, prepared in accordance with generally accepted accounting principles in effect from time to time and (ii) updates of information contained in the following tables in the Official Statement, dated July 31, 1996, relating to the Certificates:

1. Table 11 - Building Permits.
2. Table 12 - Balance Sheet for the General Fund.
3. Table 13 - Statement of Revenues, Expenditures and Changes in Fund Balance for the General Fund.

4. Table 14 - Operating Budget Summary (Actual, Adopted).
5. Table 15 - Assessed Valuation.
6. Table 16 - Secured Levies and Collections.
7. Table 17 - Principal Taxpayers.
8. Information under the caption "Labor Relations."
9. Information under the caption "Pension Plan."
10. Table 18 - Annual Claims and Insurance Premium Payments.
11. Table 19 - Pooled Investment Fund.
12. Table 20 - Long-Term Obligations.
13. Table 21 - Short Term Borrowings.
14. Table 22 - Future Minimum Rental Payments.
15. Table 23 - Direct and Overlapping Debt.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which have been submitted to each of the Repositories or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify each such other document so included by reference.

#### SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Certificates, if the City determines that such event is material under federal securities law:

1. principal and interest payment delinquencies;
2. non-payment related defaults;
3. modifications to rights of Certificate Holders;
4. optional, contingent or unscheduled prepayments;
5. defeasances;
6. rating changes;
7. adverse tax opinions or events adversely affecting the tax-exempt status of the Certificates;
8. unscheduled draws on credit enhancements reflecting financial difficulties;

9. unscheduled draws on the Reserve Account reflecting financial difficulties;
10. substitution of credit or liquidity providers or their failure to perform; and
11. release, substitution or sale of property securing repayment of the Certificates.

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event the City shall as soon as possible determine if such event would be material under applicable federal securities laws.

(c) If the City has determined that knowledge of the occurrence of a Listed Event would be material under federal securities laws, the City shall promptly file such notice with the Repositories. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(4) and (5) shall not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Holders of affected Certificates pursuant to the Trust Agreement.

**SECTION 6. Termination of Reporting Obligation.** The obligations of the City under this Disclosure Certificate shall terminate upon the defeasance, prior redemption or payment in full of all of the Certificates. If such termination occurs prior to the final maturity of the Certificates, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

**SECTION 7. Dissemination Agent.** The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent.

**SECTION 8. Amendment: Waiver.** Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate and any provision of this Disclosure Certificate may be waived, provided the following conditions are satisfied:

- (a) the amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the City or type of business conducted; and
- (b) this Disclosure Certificate, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original execution and delivery of the Certificates, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and
- (c) the amendment or waiver either (i) is approved by the Holders of the Certificates in the same manner as provided in the Trust Agreement for amendments to the Trust Agreement with the consent of the Holders, or (ii) does not materially impair the interests of Certificate Holders, as determined by nationally recognized bond counsel; and
- (d) in the event of any amendment of this Disclosure Certificate, the City shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall not have any obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the City or the Dissemination Agent, if applicable, to comply with any provision of this Disclosure Certificate any Holder or Beneficial Owner of the Certificates may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City or the Dissemination Agent (if applicable), as the case may be, to comply with its obligations under this Disclosure Certificate provided such action is taken in the Federal or State Court located in the County of San Diego, State of California, and provided further that no remedy other than substantial performance may sought or granted against the City. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Trust Agreement, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel substantial performance.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent (if one is appointed by the City) shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of the disclosure of information pursuant to this Disclosure Certificate or out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the gross negligence or wilful misconduct of the Dissemination Agent. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent, termination of Disclosure Certificate and payment of the Certificates. The Dissemination Agent (if not the City) shall not have any responsibility or liability for the failure to report any Listed Event or any financial information or as to which the City did not prepare a report in a format suitable for filing with the Repositories.

SECTION 12. Notices. Any notices or communications to or among any of the parties to this Disclosure Certificate may be given as follows:

To the City:       City of San Diego  
                      202 "C" Street  
                      Mail Station 9-B  
                      San Diego, CA 92101  
                      Attention: Financial and Technical Services Manager  
                      Fax: (619)236-6219  
                      Telephone: (619) 236-6070

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

SECTION 13. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter and Holders from time to time of the Certificates, and shall create no rights in any other person or entity.

SECTION 14. Signature. This Disclosure Certificate has been executed by the undersigned on the date hereof, and such signature binds the City to the undertaking herein provided.

Dated: August 15, 1996

CITY OF SAN DIEGO

By: \_\_\_\_\_  
City Manager

**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Obligated Party: City of San Diego (the "City")

Name of Issue: Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program Series 1991) Series 1996B

Date of Delivery: August 15, 1996

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-named Certificates as required by Section 3 of the Continuing Disclosure Certificate, dated as of August 15, 1996. [The City anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

CITY OF SAN DIEGO

cc: City Manager  
City of San Diego

## **EXHIBIT B**

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission as of the date of this Disclosure Certificate:

### **Bloomberg Municipal Repository**

P.O. Box 840  
Princeton, NJ 08542-0840  
Internet address: MUNIS@bloomberg.doc  
(609) 279-3200  
FAX (609) 279-3235 (609) 279-5963  
Contact: Dave Campbell

### **Moody's NRMSIR**

Public Finance Information Center  
99 Church Street  
New York, NY 10007-2796  
(800) 339-6306  
FAX (212) 553-1460  
Contact: Claudette Stephenson  
(212) 553-0345

### **Disclosure, Inc.**

Document Augmentation/  
Municipal Securities  
5161 River Road  
Bethesda, MD 20816  
(301) 951-1450  
FAX (301) 718-2329  
Contact: Barry Sugarman (301) 215-6015

### **Thomson NRMSIR**

Secondary Market Disclosure  
395 Hudson Street, 3rd Floor  
New York, NY 10014  
Internet address: Disclosure@muller.com  
(212) 807-3826  
FAX (212) 989-2078  
Contact: Thomas Garske

### **JJ Kenny Information Services**

The Repository  
65 Broadway, 16th Floor  
New York, NY 10006  
(212) 770-4568  
FAX (212) 797-7994  
Contact: Joan Horai, Repository

### **R.R. Donnelley Financial**

Attention: Municipal Securities Disclosure Archive  
559 Main Street  
Hudson, MA 01749  
(800) 580-3670  
FAX (508) 562-1969  
Contact: James Johnson